

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs April 1, 2014

**CHARLES GRAHAM, aka CHARLES STEVENSON v.  
MICHAEL DONAHUE, WARDEN**

**Appeal from the Circuit Court for Hardeman County  
No. CC-13-CR-145 Joseph H. Walker, III, Judge**

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**No. W2013-02300-CCA-R3-HC - Filed May 30, 2014**

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The Petitioner, Charles Graham, aka Charles Stevenson, appeals as of right from the Hardeman County Circuit Court's summary dismissal of his petition for writ of habeas corpus. In his petition, the Petitioner argued that his judgment of conviction for tampering with evidence was void because (1) the indictment was defective for failing to include the essential elements of the offense and (2) the facts alleged in the indictment demonstrate that he "mere[ly] abandon[ed]" the marijuana not that he tampered with the evidence. On appeal, he contends that there was a material variance between the indictment on the tampering with evidence count and the proof offered at trial. Following our review, we affirm the order of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and NORMA MCGEE OGLE, JJ., joined.

Charles Graham, aka Charles Stevenson, Whiteville, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter, and David H. Findley, Senior Counsel, for the appellee, State of Tennessee.

**OPINION**  
**FACTUAL BACKGROUND**

Following the Petitioner's involvement in a May 27, 2004 car crash, officers removed marijuana from inside the Petitioner's vehicle, showed it to him, and laid it on the trunk of the vehicle. See State v. Charles Edward Graham, No. E2005-02937-CCA-R3-CD, 2008 WL 199851, at \*1-4, \*11 (Tenn. Crim. App. Jan. 24, 2008), perm. app. denied, (Tenn. Sept. 15,

2008). According to Officer Shane Watson of the Knoxville Police Department, the Petitioner “suddenly reached out and grabbed one of the marijuana cigarettes and attempted to crush it in his hands.” Id. at \*11. “The officers were eventually able to get the marijuana cigarette out of [the Petitioner’s] hand, but it was broken into pieces.” Id. Officer Watson stated that “they were able to recover most of the marijuana from the ground but were not able to retrieve all of the contraband.” Id.

The Petitioner was indicted by the Knox County Grand Jury in November of 2004 for vehicular assault, driving under the influence, tampering with evidence, simple possession of a controlled substance, resisting arrest, and failure to provide proper evidence of financial responsibility. See Graham, 2008 WL 199851, at \*4. At the conclusion of a jury trial, the Petitioner was found guilty of reckless aggravated assault as a lesser-included offense of vehicular assault, tampering with evidence, possession of marijuana, and failure to provide proof of financial responsibility. Id. The jury found the Petitioner not guilty of driving under the influence and resisting arrest. Id. The Petitioner was sentenced as a career offender to twelve years for reckless aggravated assault, fifteen years for tampering with evidence, six years for possession of marijuana, and ordered to pay a \$100 fine for failure to provide proof of financial responsibility. Id. at \*1. The sentences for reckless aggravated assault and tampering with evidence were ordered to run consecutively to each other but concurrently with the remaining sentences, resulting in a total effective sentence of twenty-seven years. Id.

In his direct appeal to this court, the Petitioner raised multiple issues, including a challenge to the sufficiency of the evidence supporting his tampering with evidence conviction. Regarding the tampering with evidence offense, the Petitioner argued (1) “that it was impossible for the State to have provided the evidence, namely the marijuana, at trial that [the Petitioner] allegedly destroyed” and, furthermore, (2) “that even if [the Petitioner] attempted to destroy the evidence, the testimony at trial was that all of the marijuana was recovered.” Graham, 2008 WL 199851, at \*9. This court determined that the evidence was sufficient to support the Petitioner’s conviction. Id. at \*11. The Petitioner’s remaining issues were likewise found to be without merit, and his convictions and effective sentence were affirmed. The Tennessee Supreme Court denied the Petitioner’s application for permission to appeal.

The Petitioner then filed a timely petition for post-conviction relief alleging that his convictions resulted from the ineffective assistance of counsel. Following an evidentiary hearing, the post-conviction court denied relief. This court affirmed the post-conviction court’s denial of relief. See Charles Edward Graham v. State, No. E2010-02379-CCA-R3-PC, 2012 WL 344936 (Tenn. Crim. App. Feb. 3, 2012), perm. app. denied, (Tenn. May 21, 2012). Subsequently, in August 2012, the Petitioner filed a petition for writ of error coram

nobis, alleging as newly discovered evidence the judicial misconduct and incompetency of the judge who presided over the Petitioner's trial and post-conviction proceedings. The coram nobis court denied relief, and this court affirmed on appeal pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. See Charles Edward Graham, aka Charles Edward Stevenson v. State, No. E2012-02063-CCA-R3-CO, 2013 WL 5314687, at \*1-2 (Tenn. Crim. App. Sept. 20, 2013) (memorandum opinion).

On September 11, 2013, the Petitioner filed a petition for writ of habeas corpus, alleging that his tampering with evidence conviction was void due to a defective indictment. In support of his argument, the Petitioner cited to this court's statements on direct appeal in discussing the sufficiency of the evidence that Officer Watson "removed" the marijuana from the Petitioner's vehicle and that, after grabbing the cigarette, the Petitioner "attempted" to crush it in his hands. See Graham, 2008 WL 199851, at \*11. The Petitioner then contended that the tampering with evidence count of the indictment was in direct contravention of Tennessee Code Annotated section 39-16-503 because that section did not include "the word 'remove' in its 'actus reus[.]'" He generalized that he was not given "full notice of the charges against him," that the State failed to prove the essential elements of the crime, and that the defective indictment "deprived" the trial court of subject matter jurisdiction. Count 4 of the Petitioner's indictment, which he attached to his petition, reads, "On or about \_\_ day of May, 2004, in the State and County aforesaid, [the Petitioner] did unlawfully and knowingly destroy things with the intent to impair the availability of said things as evidence in an investigation, and . . . knowing that an investigation was pending and in progress, in violation of T.C.A. [§] 39-16-503[.]"

Next, he complained that the indictment was insufficient because the facts clearly demonstrated that "mere abandonment" of the evidence took place rather than tampering with the evidence, which was "required in order to invoke jurisdiction of the trial court to inquire into the offense[.]" In a similar vein, the Petitioner asserted that the evidence was insufficient to justify finding him guilty of tampering with evidence rather than a finding of "mere abandonment" in light of State v. Hawkins, 406 S.W.3d 121 (Tenn. 2013). He explained that in Hawkins, our supreme court prohibited "piggybacking" a felony tampering with evidence conviction on top of a misdemeanor possessory offense when the evidence was not actually altered, concealed, or destroyed in some way. See id. at 133-138.

Prior to the State filing a response, the habeas corpus court summarily dismissed the petition, finding that the Petitioner was "not entitled to habeas corpus relief based on a defective indictment." The Petitioner maintains that the habeas corpus court should have appointed counsel and held a hearing. This timely appeal followed.

## ANALYSIS

On appeal, the Petitioner raises several challenges to the validity of the indictment against him. The determination of whether to grant habeas corpus relief is a question of law, and our review is de novo. Summers v. State, 212 S.W.3d 251, 262 (Tenn. 2007). The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. Tenn. Const. art. I, § 15. However, the “grounds upon which habeas corpus relief may be granted are very narrow.” Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only where the petitioner has established: (1) a lack of jurisdiction for the order of confinement on the face of the judgment or in the record on which the judgment was rendered; or (2) that he is otherwise entitled to immediate release because of the expiration of his sentence. See State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000); Archer v. State, 851 S.W.2d 157, 189 (Tenn. 1993).

The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex. rel. Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn.1968). A void judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” Summers, 212 S.W.3d 251 at 256. On the other hand, a voidable judgment or sentence is one which is facially valid and which requires evidence beyond the face of the judgment or the record of the proceedings to establish its invalidity. Taylor, 995 S.W.2d at 83. A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005). A habeas corpus court may summarily dismiss a petition without a hearing when the petition “fails to demonstrate that the judgment is void.” Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004); Tenn. Code Ann. § 29-21-109.

Generally, defenses based upon indictment deficiencies must be presented prior to trial. Tenn. R. Crim. P. 12(b)(2), (f). A valid indictment is essential to prosecution, however, and may be subject to attack at any time if the content does not charge an offense or does not confer jurisdiction. Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). The functions of the indictment are to provide notice of the charge, enable entry of a proper judgment upon conviction, and protect against double jeopardy. State v. Byrd, 820 S.W.2d 739, 741 (Tenn. 1991) (citing State v. Pearce, 7 Tenn. (Peck) 65, 67 (1823); State v. Haynes, 720 S.W.2d 76, 82 (Tenn. Crim. App. 1986)).

Article I, section 14 of the Tennessee Constitution provides that “no person shall be put to answer any criminal charge but by presentment, indictment or impeachment.” Tenn. Const. art. I, § 14. Article I, section 9 of the Tennessee Constitution guarantees that “in all criminal prosecutions, the accused [has] the right . . . to demand the nature and cause of the accusation against him, and have a copy thereof.” Tenn. Const. art. I, § 9. Regarding the

necessary content of an indictment, Tennessee Code Annotated section 40-13-202 provides as follows:

The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment.

The statute proscribing tampering with evidence provides, in relevant part, as follows: “It is unlawful for any person, knowing that an investigation or official proceeding is pending or in progress, to [a]lter, destroy, or conceal any record, document or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding[.]” Tenn. Code Ann. § 39-16-503(a)(1). The language of Count 4 of the Petitioner’s indictment tracked the statutory provision in effect using the word “destroy” things, and it did not include the term “remove.” It is generally sufficient for the indictment to state the offense charged in the words of the statute. See State v. Majors, 318 S.W.3d 850, 864 (Tenn. 2010) (holding that indictment for tampering with evidence was sufficient although it did not identify the “thing” with which defendant tampered) (citing State v. Griffis, 964 S.W.2d 577, 591 (Tenn. Crim. App. 1997)).

Moreover, as the State aptly notes, the indictment referenced the appropriate statute, stated the general timeframe for the offense, and alleged the essential elements of the offenses, including the appropriate mental state. We conclude that the Petitioner was apprised of the nature of the charges against him and protected against double jeopardy. The court of conviction had sufficient information to enter a proper judgment. See Sidney Cleve Metcalf v. David Sexton, Warden, No. E2011-02532-CCA-R3-HC, 2012 WL 3555311, at \*5 (Tenn. Crim. App. Aug. 20, 2012), perm. app. denied, (Tenn. Nov. 21, 2012); Ronald Eugene Gilmore v. Kenneth Locke, Warden, No. M2005-01235-CCA-R3-HC, 2006 WL 1097493, at \*3 (Tenn. Crim. App. Mar. 30, 2006). Additionally, the indictment is not required to allege the specific theory that the State will advance at trial. Wyatt v. State, 24 S.W.3d 319, 324 (Tenn. 2000).

We also agree with the State that the Petitioner’s second complaint regarding “mere abandonment” of the evidence, and his citation to Hawkins, 406 S.W.3d 121, is merely a challenge to the sufficiency of the evidence. Essentially, the Petitioner is arguing that the evidence was not sufficient to support his conviction for tampering with evidence because there was no proof that he actually altered, concealed, or destroyed the marijuana in some way. See Hawkins, 406 S.W.3d at 133-138. Sufficiency of the evidence is not a proper basis

for habeas corpus relief. Gant v. State, 507 S.W.2d 133, 136-37 (Tenn. Crim. App. 1973) (sufficiency of the evidence and witness credibility not proper subjects for habeas relief); see also Metcalf, 2012 WL 3555311, at \*5. Moreover, this court determined on direct appeal that the evidence was sufficient to support Petitioner's conviction for tampering with evidence. See Graham, 2008 WL 199851, at \*9-11. A Petitioner may not use habeas proceedings as a means to raise and relitigate issues previously ruled upon. Gant, 507 S.W.2d at 136-37.

Finally, as an additional ground on appeal, the Petitioner claims a material variance existed between the indicted offense of tampering with evidence and the proof offered at trial. This issue was not presented to the habeas corpus court. See Tenn. R. App. 36(a). Regardless, our supreme court has held that an allegation of a material variance between the proof and the offense charged in the indictment is not one that is subject to habeas corpus relief. See Ritchie, 20 S.W.3d at 630; see also Eric D. Wallace v. Stephen Dotson, Warden, No. W2006-00908-CCA-R3-HC, 2007 WL 852173, at \*2 (Tenn. Crim. App. Mar. 22, 2007) (citations omitted). This is yet another attempt to relitigate the sufficiency of the evidence.

The Petitioner has failed to assert a claim that would entitle him to habeas corpus relief. After full consideration of the record, the briefs, and the law governing the issues presented, we conclude that there is no error in the judgment of the habeas corpus court.

### CONCLUSION

Based upon the foregoing, the order of summary dismissal is affirmed.

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D. KELLY THOMAS, JR., JUDGE